

ASSEMBLY BILL

No. 13

**Introduced by Assembly Members V. Manuel Pérez, Bradford, and
Skinner**

February 7, 2011

An act to amend Sections 2069 and 2099 of, and to add Sections 2099.10 and 2840 to, the Fish and Game Code, and to amend Section 25524 of, to add Section 25619 to, and to add and repeal Sections 21081.8 and 21097.6 of, the Public Resources Code, relating to renewable energy resources, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 13, as introduced, V. Manuel Pérez. Energy: renewable resources: endangered species: environmental impact reports.

(1) The California Endangered Species Act (CESA) requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species, and requires the Department of Fish and Game to recommend, and the commission to adopt, criteria for determining if a species is endangered or threatened. CESA authorizes the department to authorize the take of threatened species, endangered species, or candidate species by permit if certain requirements are met. CESA authorizes the department, in consultation with the State Energy Resources Conservation and Development Commission (Energy Commission) and, to the extent practicable, the United States Fish and Wildlife Service and the United States Bureau of Land Management, to design and implement actions to protect, restore, or enhance the habitat of plants and wildlife that can be used to fully mitigate the impacts of the take of endangered, threatened, or candidate species (mitigation actions) resulting from certain solar thermal and photovoltaic

powerplants in the planning area of the Desert Renewable Energy Conservation Plan.

This bill additionally would authorize the department to design and implement these mitigation actions for proposed wind and geothermal powerplants in the planning area subject to the Desert Renewable Energy Conservation Plan.

(2) Existing law requires the department to collect, and requires the owner or developer of an eligible project to pay, a one-time permit application fee of \$75,000 to the department for deposit into the Fish and Game Preservation Fund. Existing law requires the department to utilize the permit application fee to pay for all or a portion of the department's cost of processing incidental take permit applications pursuant to CESA.

This bill would additionally require the department to collect, and an owner or developer of an eligible project to pay, a one-time permit application fee of \$75,000 to the department for deposit into the Fish and Game Preservation Fund, to pay for all or a portion of the department's cost of processing incidental take permit applications. The bill would define "eligible project" to mean an eligible renewable energy resource, as defined in the California renewables portfolio standard program. If the permit application fee is insufficient to complete permitting work due to the complexity of a project or timeline delays, the bill would authorize the department to collect an additional fee from the owner or developer to pay for its actual costs, not to exceed an additional \$75,000.

Existing law establishes the Renewable Energy Resources Development Fee Trust Fund as a continuously appropriated fund in the State Treasury to serve, and be managed, as an optional, voluntary method for developers or owners of eligible projects, as defined, to deposit fees sufficient to complete mitigation actions established by the department and thereby meet their requirements pursuant to CESA or the certification authority of the Energy Commission. The definition of eligible projects, for purposes of these provisions and fees, is limited to certain solar thermal powerplants and photovoltaic powerplants proposed to be constructed in the planning area subject to the Desert Renewable Energy Conservation Plan.

This bill would expand the definition of eligible projects to include wind and geothermal powerplants proposed to be constructed in the planning area subject to the Desert Renewable Energy Conservation

Plan. By expanding the purposes for which moneys in this continuously appropriated fund may be used, this bill would make an appropriation.

(3) The Natural Community Conservation Planning Act authorizes the Department of Fish and Game to enter into agreements with any person or public entity for the purpose of preparing a natural community conservation plan, in cooperation with a local agency that has land use permit authority over the activities proposed to be addressed in the plan, to provide comprehensive management and conservation of multiple wildlife species.

This bill would require the department to enter into one or more planning agreements with appropriate plan participants, including, but not limited to, the Energy Commission, one or more counties within the San Joaquin Valley, as defined, and other persons or public entities for the purpose of preparing one or more natural community conservation plans, if certain conditions are met with regard to the plan and the parties to the planning agreement.

(4) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This bill, until January 1, 2014, would not require an EIR to analyze, or mitigate, where feasible, the environmental effect for an eligible renewable energy resource, including greenhouse gas emissions, not found to be significant under CEQA.

The bill would authorize an applicant for a project to construct an eligible renewable energy resource that has an approved electricity purchase agreement to provide information to the lead agency regarding the environmental benefits of the project when comments may be received by the lead agency on a draft environmental impact report or negative declaration. The bill would authorize the lead agency to consider this information when making a finding under CEQA. The bill would repeal these provisions on January 1, 2014.

(5) The Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission), and requires it to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for power statewide. The act grants the Energy Commission the exclusive authority to certify any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto.

Existing law requires the Energy Commission to establish a process for certain applicants for certification of a solar thermal powerplant that is proposed to be constructed in the planning area subject to the Desert Renewable Energy Conservation Plan, as defined, that allows the applicant to elect to pay additional fees to be used by the Energy Commission to contract with 3rd parties to assist the Energy Commission staff in performing the analysis otherwise performed by staff in determining whether or not to issue a certification.

This bill would expand this process to include any applicant for certification of an eligible renewable energy resource.

The bill would require the Energy Commission, upon appropriation by the Legislature, to provide \$7,000,000 in grants to qualified counties for the development or revision of rules and policies, including general plan elements, zoning ordinances, and a natural community conservation plan as a plan participant, to facilitate the development of eligible renewable energy resources, and their associated electric transmission facilities, on disturbed lands, as defined. The bill would require a general plan element or zoning ordinance that is adopted or revised pursuant to a grant to be completed within 2 years of receipt of the grant and be consistent with the conservation strategies of any natural community conservation plan, if one had been approved or is under development in the county.

(6) This bill would provide that it would be operative only if an unspecified bill of the First Extraordinary Session is enacted and becomes effective on or before January 1, 2012.

(7) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and

stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

Vote: majority. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2069 of the Fish and Game Code is
2 amended to read:

3 2069. (a) For purposes of this section, the following terms
4 have the following meanings:

5 (1) “Desert Renewable Energy Conservation Plan” means the
6 completed conservation plan in the Mojave and Colorado Desert
7 regions adopted pursuant to the Natural Community Conservation
8 Planning Act (Chapter 10 (commencing with Section 2800)), and
9 covers the geographical area described in Section 4 of, and depicted
10 in Exhibit A to, the “Draft Planning Agreement by and among
11 California Department of Fish and Game, California Energy
12 Commission, United States Bureau of Land Management, and
13 United States Fish and Wildlife Service for the Desert Renewable
14 Energy Conservation Plan,” document REAT-1000-2009-034,
15 dated October 2009.

16 (2) “Energy Commission” means the State Energy Resources
17 Conservation and Development Commission.

18 (b) The department, in consultation with the Energy Commission
19 and, to the extent practicable, the United States Fish and Wildlife
20 Service and the United States Bureau of Land Management, may
21 design and implement actions, including the purchase of land and
22 conservation easements, to protect, restore, or enhance the habitat
23 of plants and wildlife that can be used to fully mitigate the impacts
24 of the take of endangered species, threatened species, or candidate
25 species, for purposes of paragraph (2) of subdivision (b) of Section
26 2081 and Chapter 6 (commencing with Section 25500) of Division
27 15 of the Public Resources Code, resulting from solar thermal,
28 *photovoltaic, wind, and ~~photovoltaic~~ geothermal* powerplants in
29 the Desert Renewable Energy Conservation Plan planning area
30 that meet each of the following requirements:

(1) Either the Energy Commission determines that the application for certification was complete by February 1, 2010, or the local government in which the project is located has determined the project permit application is complete or has issued a notice of preparation of an environmental impact statement pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code by February 1, 2010.

(2) The developer or owner of the proposed powerplant or generation facility has applied for, and would qualify for, funding under the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5). For purposes of this ~~subparagraph~~, *paragraph*, “funding” means a loan guarantee made pursuant to Section 406 of the act (42 U.S.C. Sec. 16516) or a grant for specified energy property in lieu of a tax credit provided pursuant to Section 1603 of Division B of the act, which division is titled the American Recovery and Reinvestment Tax Act of 2009.

(c) A mitigation action may only be used for the mitigation purposes described in subdivision (b) if it meets one of the following conditions:

(1) The department has implemented the mitigation action and determined that the action has resulted in the protection, restoration, or enhancement of the habitat of one or more species that are proposed to be covered by the Desert Renewable Energy Conservation Plan, and that are located in the planning area, and, based upon that determination, can be used, for purposes of paragraph (2) of subdivision (b) of Section 2081, to fully mitigate the impacts of the take of the species from one or more projects identified in subdivision (b).

(2) The mitigation action is included in an interim mitigation strategy for projects identified in subdivision (b). An interim mitigation strategy pursuant to this paragraph shall be developed by the department, in consultation with the Energy Commission and, to the extent practicable, the United States Fish and Wildlife Service and the United States Bureau of Land Management, and shall include all of the following:

(A) A description of specific mitigation areas and specific actions on public or private land within the Desert Renewable Energy Conservation Plan planning area that are to be implemented, including a focus on habitat preservation, while also

1 including enhancement or restoration actions that will do all of the
2 following:

3 (i) Contribute to the conservation of each candidate species,
4 threatened species, or endangered species for which a permit is
5 issued.

6 (ii) Adopt a regional planning perspective that provides a
7 foundation for, or that will complement, any conservation strategy
8 to be developed for the Desert Renewable Energy Conservation
9 Plan.

10 (iii) Implement mitigation actions within a reasonable period
11 of time relative to the impact to the affected candidate species,
12 threatened species, or endangered species, including, where
13 feasible, advance mitigation. For purposes of this clause, “advance
14 mitigation” means mitigation implemented before, and in
15 anticipation of, future impacts to natural resources.

16 (iv) Include a description of the species that would be benefited
17 by each mitigation action and how it would be benefited.

18 (B) A cost estimate for each action, whether on public or private
19 land, using total cost accounting, including, as applicable, land
20 acquisition costs, conservation easement costs, monitoring costs,
21 transaction costs, restoration costs, the amount of a nonwasting
22 endowment account for land management or easement stewardship
23 costs by the department or other management entity, and
24 administrative costs.

25 (d) The interim mitigation strategy shall be based on best
26 available science and shall be reviewed by the Desert Renewable
27 Energy Conservation Plan independent science advisors. The
28 department shall seek and consider comments from the Desert
29 Renewable Energy Conservation Plan independent science advisors
30 in the design and location of each mitigation action implemented
31 pursuant to this section. If the department elects to not incorporate
32 comments of the independent science advisors into mitigation
33 actions, the department shall explain the reasons for that decision
34 in writing.

35 (e) The interim mitigation strategy shall be completed by the
36 department no later than 60 days following the operative date of
37 the act adding this section.

38 (f) (1) ~~Nothing in this~~ *This section shall does not* modify the
39 requirements of Section 2081, including the requirement to, ~~where~~
40 ~~feasible,~~ *to avoid and minimize impacts, where feasible, or the*

1 requirements of Division 13 (commencing with Section 21000)
2 of, or ~~the requirements of~~ Chapter 6 (commencing with Section
3 25500) of Division 15 of, the Public Resources Code, or affect the
4 existing authority of the department to authorize mitigation actions
5 to comply with this chapter.

6 (2) With respect to the Energy Commission, in the case of an
7 applicant seeking certification for a solar thermal power plant
8 pursuant to Chapter 6 (commencing with Section 25500) of
9 Division 15 of the Public Resources Code, or a lead agency, as
10 defined in Section 21067 of the Public Resources Code, in the case
11 of an applicant seeking approval of a ~~photovoltaic powerplant,~~
12 *photovoltaic, wind, or geothermal powerplant* the sole effect of a
13 mitigation action described in subdivision (c), and paid for through
14 the deposit of fees as described in Section 2099, is to relieve an
15 applicant of the obligation to directly take actions ~~which~~ *that* are
16 taken instead by the department or its contractor or designee
17 pursuant to subdivision (b) to meet the applicant's obligations with
18 respect to the powerplant's impacts to species and habitat. The
19 mitigation action and deposit of fees shall not relieve the applicant
20 of any other obligation, or the Energy Commission or the lead
21 agency of any of its existing requirements of Division 13
22 (commencing with Section 21000) of, or the requirements of
23 Chapter 6 (commencing with Section 25500) of Division 15 of,
24 the Public Resources Code to analyze, avoid, minimize, or mitigate
25 impacts to species and habitat, or make the findings required by
26 those statutes.

27 (g) The mitigation actions implemented pursuant to this section
28 shall be incorporated into the Desert Renewable Energy
29 Conservation Plan upon the finalization of the plan, to the extent
30 the mitigation actions are consistent with the plan's conservation
31 strategy.

32 SEC. 2. Section 2099 of the Fish and Game Code is amended
33 to read:

34 2099. (a) For purposes of this section, the following terms
35 have the following meanings:

36 (1) "Eligible project" means a solar thermal ~~powerplant~~
37 *powerplant, photovoltaic powerplant, wind powerplant, or*
38 ~~photovoltaic~~ *geothermal powerplant* meeting the requirements of
39 paragraphs (1) and (2) of subdivision (b) of Section 2069.

1 (2) “Energy Commission” means the State Energy Resources
2 Conservation and Development Commission.

3 (b) (1) The Renewable Energy Resources Development Fee
4 Trust Fund is hereby established in the State Treasury. The
5 department shall collect a fee from the owner or developer of an
6 eligible project that elects to use mitigation actions developed and
7 approved by the department pursuant to Section 2069, and all
8 moneys received for purposes of mitigation actions pursuant to
9 Section 2069 shall be deposited in the fund and shall be held in
10 trust and be expended solely for the purposes of, and in conformity
11 with, that section, applicable permit or certification requirements
12 for eligible projects, and any contractual agreement between the
13 Energy Commission or department and the owner or developer of
14 an eligible project. The department may contract with, or award
15 grants to, third parties to implement mitigation actions in
16 conformity with Section 2069 and this section.

17 (2) Upon direction by the department, the Controller shall create
18 any accounts or subaccounts within the fund that the department
19 determines are necessary or convenient to facilitate management
20 of the fund.

21 (3) The fund shall serve, and be managed, as an optional,
22 voluntary method for developers or owners of eligible projects to
23 deposit fees to complete mitigation actions meeting the conditions
24 of subdivision (c) of Section 2069 and for the purpose of meeting
25 the requirements of this chapter or the requirements of Chapter 6
26 (commencing with Section 25500) of Division 15 of the Public
27 Resources Code. Notwithstanding Section 13340 of the
28 Government Code, the money in the fund is hereby continuously
29 appropriated to the department, without regard to fiscal years, for
30 the purposes enumerated in this section and Section 2069. An
31 expenditure shall not be made from the fund except as authorized
32 by the department.

33 (4) The sum of ten million dollars (\$10,000,000) is hereby
34 transferred, as a loan, from the Renewable Resource Trust Fund
35 to the fund. This loan shall be repaid from the fund to the
36 Renewable Resource Trust Fund no later than December 31, 2012.
37 The department shall use these funds, pursuant to paragraph (1)
38 of subdivision (c) of Section 2069, to purchase mitigation lands
39 or conservation easements, and to cover related restoration,
40 monitoring, and transaction costs incurred in advance of the receipt

1 of fees pursuant to paragraph (5) and to cover the department's
2 administrative costs for the program.

3 (5) A developer or owner of an eligible project that elects to
4 use mitigation actions developed and authorized by the department
5 pursuant to Section 2069 shall remit fees to the department for
6 deposit into the fund for those mitigation actions in an amount that
7 reflects the determination by the Energy Commission, with respect
8 to a solar thermal powerplant, or the department, with respect to
9 a solar photovoltaic powerplant, *wind powerplant, or geothermal*
10 *powerplant*, of the costs attributable to the mitigation actions that
11 meet the standards of this chapter. The amount of fees to be paid
12 by a developer or owner of an eligible project to meet the standards
13 of this chapter shall be calculated on a per acre basis, using total
14 cost accounting, and shall include, as applicable, land acquisition
15 or conservation easement costs, monitoring costs, restoration costs,
16 transaction costs, the amount of a nonwasting endowment account
17 for land management or easement stewardship costs by the
18 department or other management entity, and administrative costs
19 and funds sufficient to repay any expenditure of state funds made
20 pursuant to paragraph (4). To ensure the funds deposited pursuant
21 to this section are sufficient to meet the standards of this chapter,
22 the project developer or owner, in addition to payment of those
23 funds, shall provide security, in a form and amount, not to exceed
24 5 percent of the amount of the funds, excluding any portion of the
25 funds to be used for a nonwasting endowment, to be determined
26 by the Energy Commission, with respect to a solar thermal
27 powerplant, or to be determined by the department, with respect
28 to a solar photovoltaic *powerplant, wind powerplant, or geothermal*
29 *powerplant*.

30 (c) The department shall monitor the implementation of the
31 mitigation actions and the progress of the construction of the
32 eligible projects. The department shall report all deposits, and the
33 source of those deposits, on its Internet Web site. The department
34 shall also report all expenditures from the fund on its Internet Web
35 site and identify the mitigation activities or programs that each
36 expenditure funded and its relationship to the permitted project.
37 The Energy Commission, with respect to a solar thermal
38 powerplant, and the department, with respect to a solar photovoltaic
39 powerplant, *wind powerplant, or geothermal powerplant*, shall
40 ensure that moneys paid pursuant to this section are used only for

purposes of satisfying the standards of paragraph (2) of subdivision (b) of Section 2081. Where moneys are used to fund mitigation actions, including the acquisition of lands or conservation easements, or the restoration of lands, that use shall be in addition to, and not duplicative of, mitigation obtained through any other means.

(d) The department and the Energy Commission shall not allow any use of the interim mitigation strategy subsequent to a determination by the department that the time and extent of mitigation actions are not being implemented in rough proportion to the impacts of those projects. The department shall reinstitute the use of the interim mitigation strategy when the department determines the rough proportionality between mitigation actions and impacts of eligible projects has been reestablished by the completion of additional mitigation actions.

SEC. 3. Section 2099.10 is added to the Fish and Game Code, to read:

2099.10. (a) The department shall collect a permit application fee from the owner or developer of an eligible project to support its permitting of eligible projects pursuant to this chapter. The owner or developer of a proposed eligible project shall pay a one-time permit application fee of seventy-five thousand dollars (\$75,000) to the department. For purposes of this section, an “eligible project” means an eligible renewable energy resource as defined in the California renewables portfolio standard program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).

(b) The department shall collect the permit application fee, at the time the owner or developer submits its permit application or, for eligible projects for which an application has already been submitted, on or before January 30, 2012. The department shall utilize the permit application fee to pay for all or a portion of the department’s cost of processing incidental take permit applications pursuant to subdivision (b) of Section 2081 and Section 2080.1. If the permit application fee is insufficient to complete permitting work due to the complexity of a project or timeline delays, the department may collect an additional fee from the owner or developer to pay for its actual costs, not to exceed an additional seventy-five thousand dollars (\$75,000).

(c) For an eligible project seeking site certification, pursuant to Chapter 6 (commencing with Section 25500) of Division 1 of the Public Resources Code, by the Energy Commission, the owner or developer shall pay the permit application fee directly to the department. The permit application fee paid to the department shall fund the department's participation in the Energy Commission's site certification process as the state's trustee for natural resources. The permit application fee shall be in addition to any application fees collected by the Energy Commission. The permit application fee shall be due and payable within 30 days of the operative date of this section. As used in this subdivision, "Energy Commission" has the same meaning as defined in Section 2099.

(d) The permit application fees paid pursuant to this section shall be proportional to the cost incurred by the department, and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the full costs of department programs as specified. The fees shall be deposited in the Fish and Game Preservation Fund, and shall be eligible for expenditure by the department pursuant to subdivision (b) of Section 2081 and Section 2080.1.

(e) If an owner or developer withdraws a project within 30 days after paying the permit application fee, the department shall refund any unused portion of the fee to the owner or developer.

SEC. 4. Section 2840 is added to the Fish and Game Code, to read:

2840. (a) Consistent with this chapter and to the extent practicable, the department shall enter into one or more planning agreements with appropriate plan participants, including, but not limited to, the State Energy Resources Conservation and Development Commission (Energy Commission), one or more counties within the San Joaquin Valley, and other persons or public entities for the purpose of preparing one or more natural community conservation plans, if all of the following conditions are met:

(1) The plan meets all the requirements of this chapter and appropriate financial assurances for adequate funding for those plans, as required by this chapter, are provided to the department.

(2) The parties to the planning agreement include both of the following:

1 (A) One or more local agencies with land use permit authority
2 sufficient to allow for comprehensive management and
3 conservation of multiple wildlife species.

4 (B) One or more parties that are renewable energy developers
5 proposing to construct, in total, at least 2,000 megawatts of eligible
6 renewable energy resources, as defined in the California renewables
7 portfolio standard program (Article 16 (commencing with Section
8 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities
9 Code).

10 (b) “San Joaquin Valley,” for purposes of this section, means
11 lands within the Counties of Fresno, Kern, Kings, Madera, Merced,
12 San Joaquin, Stanislaus, and Tulare, as determined by each county
13 in consultation with the department.

14 SEC. 5. Section 21081.8 is added to the Public Resources Code,
15 to read:

16 21081.8. (a) If an environmental effect for an eligible
17 renewable energy resource, as defined in subdivision (c) of Section
18 399.12 of the Public Utilities Code, is found not to be significant
19 pursuant to this division, the environmental impact report for the
20 resource shall not be required to analyze, or mitigate where
21 feasible, that environmental effect, including, but not limited to,
22 greenhouse gas emissions.

23 (b) An environmental impact report for an eligible renewable
24 resource shall contain a statement briefly indicating the reasons
25 the potentially significant effects of a project were determined not
26 to be significant and were therefore not discussed in detail in the
27 environmental impact report.

28 (c) This section shall remain in effect only until January 1,
29 2014, and as of that date is repealed, unless a later enacted statute,
30 that is enacted before January 1, 2014, deletes or extends that date.

31 SEC. 6. Section 21097.6 is added to the Public Resources Code,
32 to read:

33 21097.6. (a) An applicant for a project to construct an eligible
34 renewable energy resource, as defined in the California renewables
35 portfolio standard program (Article 16 (commencing with Section
36 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities
37 Code), that has an electricity purchase agreement that has been
38 approved by the Public Utilities Commission or a local publicly
39 owned utility may provide information to the lead agency regarding
40 the environmental benefits of the project when comments may be

received by the lead agency on a draft environmental impact report or negative declaration, as specified in the notice required pursuant to Section 21092. The lead agency, in making a finding pursuant to Section 21081, may consider information submitted pursuant to this division.

(b) Notwithstanding any other provision of law, this section does not interfere with or prevent the existing authority of an agency or department to carry out its programs, projects, or responsibilities to identify, review, approve, deny, or implement any mitigation requirements, and this section shall not be construed as a limitation on mitigation requirements for the project, or a limitation on compliance with requirements under this division or any other provision of law.

(c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 7. Section 25524 of the Public Resources Code is amended to read:

25524. (a) “Qualified applicant” *for purposes of this section* means an applicant for certification of ~~a solar thermal powerplant that meets each of the following requirements:~~

~~(1) The commission has determined that the application for certification was completed by February 1, 2010.~~

~~(2) The solar thermal powerplant is proposed to be constructed in the planning area for the Desert Renewable Energy Conservation Plan, as defined in Section 2069 of the Fish and Game Code.~~

~~(3) The developer or owner of the proposed solar thermal powerplant has applied for, and would qualify for funding under the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5). For purposes of this paragraph, “funding” includes a loan guarantee made pursuant to an eligible renewable energy resource, as defined in the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 406 399.11) of the act (42 U.S.C. Sec. 16516) or a grant for specified energy property in lieu Chapter 2.3 of a tax credit provided pursuant to Section 1603 Part 1 of Division B 1 of the act, which division is titled the American Recovery and Reinvestment Tax Act of 2009. Public Utilities Code).~~

(b) The commission shall establish a process to allow a qualified applicant to elect to pay additional fees to be used by the

1 commission to contract with a third party, or more than one third
2 party, to assist commission staff in performing the analysis
3 otherwise performed by commission staff in determining whether
4 or not to issue a certification. The commission shall retain
5 discretion as to when this option will be offered to a qualified
6 applicant.

7 (c) The amount of the fees charged by the commission pursuant
8 to this section shall be conditioned upon the qualified applicant
9 agreeing to that amount and electing to proceed with the retention
10 of the third party or parties pursuant to subdivision (b).

11 (d) All fees paid by a qualified applicant shall be used
12 exclusively for analysis of that applicant's application for
13 certification.

14 SEC. 8. Section 25619 is added to the Public Resources Code,
15 to read:

16 25619. (a) For purposes of this section, the following
17 definitions shall apply:

18 (1) "Disturbed lands" means lands that have been mechanically
19 disturbed, including lands that have been converted from native
20 vegetation through plowing, bulldozing, or other mechanical means
21 in support of activities that change the land cover, including, but
22 not limited to, agriculture, mining, and clearance for development
23 purposes. These lands, based on appropriate biological surveys,
24 may also have diminished value as habitat for mitigation purposes
25 for endangered, threatened, candidate, and other sensitive species.

26 (2) "Qualified counties" means the Counties of Fresno, Imperial,
27 Inyo, Kern, Kings, Los Angeles, Madera, Merced, Riverside, San
28 Bernardino, San Diego, San Joaquin, Stanislaus, and Tulare.

29 (b) The commission shall provide, upon appropriation by the
30 Legislature, up to seven million dollars (\$7,000,000) in grants to
31 qualified counties for the development or revision of rules and
32 policies, including general plan elements, zoning ordinances, and
33 a natural community conservation plan as a plan participant, that
34 facilitate the development of eligible renewable energy resources,
35 and their associated electric transmission facilities, on disturbed
36 lands. A general plan element or zoning ordinance that is adopted
37 or revised pursuant to this section shall be completed within two
38 years of receipt of the grant and shall be consistent with the
39 conservation strategies of any natural community conservation
40 plan, if one had been approved or is under development in the

1 county, pursuant to the Natural Community Conservation Planning
2 Act (Chapter 10 (commencing with Section 2800) of Division 3
3 of the Fish and Game Code).

4 SEC. 9. This bill shall become operative only if _____ Bill
5 ___ of the 2011–12 First Extraordinary Session is enacted and
6 becomes effective on or before January 1, 2012.

7 SEC. 10. This act addresses the fiscal emergency declared and
8 reaffirmed by the Governor by proclamation on January 20, 2011,
9 pursuant to subdivision (f) of Section 10 of Article IV of the
10 California Constitution.

O